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In re Application of :
BOWERMAN *et al* :
U.S. Application No.: 10/595,675 :
PCT No.: PCT/GB2004/004419 :
Int. Filing Date: 20 October 2004 :
Priority Date: 04 November 2003 :
Attorney Docket No.: 091350-011600 :
For: TRAFFIC CONTROL BARRIERS :

DECISION

This decision is in response to applicants' "Request for Reconsideration of Petition Decision" filed 04 February 2008. This is treated as a renewed petition under 37 CFR 1.47(a).

BACKGROUND

On 09 October, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants failed to satisfy items (2) and (4) of 37 CFR 1.47(a). Applicants were given two months to respond with extensions of time available.

On 04 February 2008, applicants filed the instant renewed petition which was accompanied by, *inter alia*, a two-month extension of time with fee, and documentary evidence (letters, emails and postal receipts) in support of the petition.

DISCUSSION

As previously noted, a petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor(s) cannot be located or refuse to cooperate; (3) a statement of the last known address(es) of the nonsigning joint inventor(s); (4) and an oath or declaration executed by the signing joint inventor(s) on their behalf and on behalf of the nonsigning joint inventor(s).

Items (1) and (3) were completed in the initial petition.

Regarding item (2), the 37 CFR 1.47(a) applicant has provided evidence that a complete copy of the subject application was received by co-inventor, Mr. Lawrence Gibbs. Petitioners included documentary evidence including copies of the letters mailed and postal receipts. Moreover, there is evidence that the documents were received by the nonsigning inventor. In addition, the 37 CFR 1.47(a) applicant states

that no response has been received from Mr. Gibbs. This conduct is construed as a refusal to cooperate and is accepted with regards to Mr. Gibbs and meets the requirements of section 409.03(d) of the MPEP.

However, the evidence is not accepted with regards to Mr. Whitton.

As discussed in the petition, the documents mailed to Mr. Whitton were returned as undeliverable. No further efforts to locate Mr. Whitton were presented. As such, there is no evidence that a refusal to cooperate has occurred. Petitioners must follow the procedures outlined in section 409.03(d) of the MPEP whereby the inventor cannot be reached which states, in part:

Where inability to find or reach a nonsigning inventor 'after diligent effort' is the reason for filing under 37 CFR 1.47, an affidavit or declaration of the facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made . . .

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. **Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts.** It is important that the statement contain facts as opposed to conclusions. (Emphasis added)

In this case, petitioners must make a diligent attempt to locate Mr. Whitton and include all relevant documentary evidence of their search with any renewed petition. For this reason, item (2) of 37 CFR 1.47(a) is not satisfied with regards to Mr. Whitton.

Concerning item (4), the 37 CFR 1.47(a) applicant claims that the two nonsigning inventors are British citizens as evidenced by an email from Corus UK Limited submitted in the renewed petition. However, petitioners must also provide a new declaration containing this information to satisfy 37 CFR 1.497(a).

For this reason, item (4) of 37 CFR 1.47(a) is also not satisfied.

CONCLUSION

For the reasons discussed above, applicants' renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

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If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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